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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,933	09/20/2001	Luba Cohen	2786-0191P	9933

7590 07/02/2003
BIRCH, STEWART, KOLASCH & BIRCH, LLP
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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,933

Applicant(s)

COHEN, LUBA

Examiner

Deborah K. Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-16 are presented for reconsideration on the merits.

Amendment and IDS

The amendment filed April 17, 2003, has been received and entered. Further, the IDS (Information Disclosure Statement) filed December 23, 2002, has been filed in the case and references submitted therewith have been considered as indicated on the enclosed PTO-1449 Form.

Response to Amendment

Applicant's amendments and arguments have overcome the prior rejections set forth in the Office action of December 17, 2002. Further, the reference to ALPA in the prior action was a selective typo and was regrettably not intended to be a part of that action.

New Claim Rejections - 35 USC § 103 based on new art discovery

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosbab, cited of record in prior office action of December 17, 2002, in view of new cited Hartung (A) and Hadhanyi (B).

Claims are discussed of record.

Kosbab is discussed of record. Note abstract and page 23, claim 26.

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Hartung teaches an water insoluble, glycyrrhizinic acid free, licorice extract.

Note the abstract and col. 1-2, all lines. Also see col. 5, lines 30-40 and see example 1, in col. 8 and further note col. 7, lines 1-22.

Hadhanyi teaches ethanolic licorice extracts of which are useful for medicaments once glycyrrhizinic acid is removed, note col. 1, lines 5-10, 35-40, 60-65 and col. 2, lines 1-5, 25-30, 65-70, col. 3, lines 15-20, col. 4, lines 25-40, and lines 55-68. Also note col. 5, lines 5-10 and 50-60. Further, at col. 6, lines 35-50, licorice extract preparation or compound derivative prepared therefrom promotes blood circulation, note col. 6, lines 35-38.

The claims differ from Kosbab in that the licorice extract is not disclosed to be water insoluble and glycyrrhizinic acid free.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to replace the licorice extract disclosed by Kosbab with the licorice extract disclosed by Hartung because licorice extracts with the glycyrrhizinic acid removed and prepared as an ethanolic extract as further disclosed by Hadhanyi find medicinal uses in the art. These uses are clearly discussed in the cited prior art as applied as a combination and which such uses encompass treatment and prevention of risk factor diseases such as lowering blood triglycerides and diabetes. Clearly one of skill would have expected successful results by preparing ethanolic extracts of licorice having glycyrrhizinic acid removed. The art clearly recognizes that the presence of the acid causes health problems for a patient being administered the plant extract for treatment and prevention of risk related diseases and conditions. One of skill in the art

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would have been motivated to use acid free, water insoluble, ethanolic licorice extracts.

The claims are prima facie obvious over the newly applied art rejection.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 305-3592 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.

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Deborah K. Ware

June 30, 2003

A handwritten signature in cursive script, appearing to read "Deborah K. Ware".

DEBORAH K. WARE
PATENT EXAMINER